IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5511 of 2010 (O&M)
Decided on: 27.11.2017

National Insurance Co. Ltd. .....Appellant

versus

Neetu Ahuja and Ors. .....Respondents

FAO No. 4728 of 2011 (O&M)

Neetu Ahuja and Ors. .....Appellants

versus

P.Massey and Ors. .....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Paul S. Saini, Advocate
for the appellant(s) in FAO No.5511 of 2010 and
for respondent No.5 in FAO No.4728 of 2011.

Mr. S.S. Chopra, Advocate along with
Mr. Rajesh Gupta,Advocate
for the appellant (s) in FAO NO.4728 of 2011 and
for respondents No.1 to 5 in FAO No.511 of 2010.

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RAJBIR SEHRAWAT, JUDGE (ORAL)

This order shall disposed of two appeals i.e. FAO No.5511 of 2010 filed by the Insurance Company of offending motorcycle bearing registration No. DL-6-SS-5021; challenging the award on the ground of its non-liability and another appeal FAO No.4728 of 2011; filed by the claimants for enhancement of the amount awarded by Motor Accident Claims Tribunal, Ludhiana.

The brief facts, as pleaded in the claim petition, are that on 30.07.2006 Dapinder Singh was coming back to his home from Noida. He was a pillion rider on a motorcycle bearing registration No.DL-6-SS-5021, which was being driven by respondent No.4 in the claim petition filed by the claimants. When they reached in front of Parkash Hospital, then another motorcycle bearing registration No. UA-06-A-4645; being driven by respondent No.2 in the claim petition, came from the opposite side. In the huff of the moment, both the drivers of the motorcycles could not control their respective motorcycles. As a result, a head on collision happened between the two motorcycles. Due to the impact of the accident, Dapinder Singh fell on the road and received multiple injuries. He succumbed to the injuries on the same day. Therefore, the claim petition was filed alleging that the accident in question had taken place due to the negligence in driving by respondents No.2 and 4, the drivers of both the motorcycles.

In the claim petition it was claimed that the deceased Dapinder Singh was working as a Senior Executive in the Company iEnergizer at Noida. He was getting Rs.21,015/- as monthly salary. Still further, it was claimed that the deceased was 32 years of age. Accordingly, the compensation was claimed.

Parties led their evidence.

To substantiate their claim; the claimants proved the last salary certificate of the deceased Dapinder singh, which he was getting at the time of accident. Beside this the certificates of previous employments were also proved on record, showing that there was continuous increase in income of the deceased with the passage of time.

On the other hand, the owner of the motorcycle bearing registration No.UA-06-A-4645 did not contest the petition and he was proceeded ex parte. Respondent No.2 appeared as RW-1 and the counsel for respondent No.4 close the evidence after tendering the Insurance Policy of the motorcycle bearing registration No.DL-6-SS-5021 and the driving licence of Gaurav Chandwani, the driver of this motorcycle, as Ex.RA and Ex.PB. Registration certificate of this motorcycle was also placed on record as Ex.RC.

After hearing the parties and appreciating the evidence, the Tribunal held that it was the case of composite negligence. It was further held that both the drivers of both the motorcycles, i.e. respondents No.2 and 4, before the Tribunal, are jointly and severely liable to pay the compensation to the claimants.

While assessing the amount of compensation, the Tribunal held that the income of the deceased has been proved at Rs.21,015/-; by proving the certificate of salary. However, the Tribunal took only the basic salary of the deceased shown in this certificate, as the income for the purpose of calculation of compensation. Accordingly, the income of the deceased was taken at Rs.9000/- per month. The reason given for taking only basic salary as income was that the deceased was getting Rs.4500/- as a house rent allowance and Rs.3000/- as conveyance allowance. After the death of deceased the claimants were residing in their parental house, therefore, they would not be entitled to counting of the house rent allowance towards income. On the same basis the conveyance allowance was declined by the Tribunal. After taking the income of the deceased at Rs.9000/- the deduction at the rate of 1/3rd was made by the Tribunal. Accordingly, after deduction the loss of dependency was taken to be Rs.6000/- per month. Applying the multiplier of 16 the total loss of dependency was calculated to be Rs.11,52,000/- (6000x12x16). Beside this the funeral expenses of Rs.2000/- was awarded. Loss of consortium was awarded at Rs.5000/- and loss of estate was awarded at Rs.2500/-. Accordingly, a total amount of Rs.11,63,500/- was awarded by the Tribunal.

Aggrieved against this award, the Insurance Company of motorcycle bearing registration No.DL-6-SS-5021 has filed the appeal on the ground that the Tribunal should have apportioned the amount between the two vehicles, if at all there was a composite negligence between the driver of the two vehicles. On the other hand, the claimants have filed FAO No.4728 of 2011 claiming that the amount deserves to be enhanced.

Arguing the case, learned counsel for the appellant in Insurance Company appeal submits that if there is a composite negligence, then the Tribunal is under obligations to specify as to what amount is to be paid by which of the tortfeasor. Since, in the present case the Tribunal has not apportioned the liability between the composite tortfeasors, therefore, the award deserves to be modified by apportioning the amount. To support his claim the counsel relies upon the judgment of Division Bench of this Court rendered in ***1989 ACJ 708*** titled as ***Narinder Pal Singh Vs. Punjab State Through Secretary Transport, Punjab, Government, Chandigarh and Ors.*** And another judgment of this Court rendered in ***FAO No.1835 of 1996*** titled as ***United India Insurance Co. Ltd. Vs. Smt. Thakri Devi and Ors..*** Counsel submits that these judgments have categorically held that in case of composite negligence, the Tribunal is under duty to apportion the amount to be paid by each of the respective tortfeasor.

Opposing the arguments of the Insurance Company, learned counsel for the claimants has submitted that it is not at all necessary for the Tribunal to apportion the amount between the composite tortfeasors. The liberty has to be left to the claimants as to from whom the claimants intends to recover or is able to recover. To support this argument, the counsel for the claimants relies upon the judgment of the Hon'ble Supreme Court reported in ***2008 (2) RCR (Civil) 120*** titled as ***T.O. Anthony vs. Karvarnan and Ors.*** and another Division Bench judgment of this Court rendered in ***2002 (1) RCR (Civil) 18*** titled as ***Oriental Insurance Company Ltd. Vs. Smt. Parveen Juneja***.

Having heard the learned counsel for the parties and perusing the record with able assistance of the counsel, this Court is of the considered opinion that the argument raised by the counsel Insurance Company do not deserves to be sustained. The judgments relied upon by the counsel for the Insurance Company are prior in time, as compared to the judgment of the Hon'ble Supreme Court and the Division Bench of this Court, which are being relied upon by the counsel for the claimants. In the judgment of ***T.O.Anthony (supra)***, the Hon'ble Supreme Court has categorically held as under:-

> Composite negligence refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and

> severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the Court to determine the extent of lability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

Therefore, there is no scope left or any other interpretation but to hold that in case of composite negligence, it is not the bounden duty of the Tribunal to record a categoric finding regarding the appointment of liability to pay, between the composite tortfeasors. On the contrary, as per the judgment of the Hon'ble Supreme Court, it is the choice of the claimant as to from which of the composite tortfeasors he wants to recover. The claimant, may have his remedy of recovering the amount, keeping in view, the easiness of recovering from either of the composite tortfeasors. Beyond that, the claimant need not be concerned about the liability of the other composite tortfeasor.

No further argument is raised by the counsel for the Insurance Company.

In view of the above, finding no merit in the appeal filed by the Insurance Company, the same is hereby dismissed. The award passed by the Tribunal is upheld to that extent.

FAO No.4728 of 2011

In the appeal filed by the claimants, the argument of the learned counsel for the appellants is that the income of the deceased has wrongly been taken at reduced level by the Tribunal. It is his submission that even the benefit of future prospects have not been extended by the Tribunal, although, the claimants in the present case are duly entitled to the same, even as per the latest judgment of the Hon'ble Supreme Court rendered in ***National Insurance Co. Ltd. Vs. Pranay Sethi, 2017 ACJ 2700.*** Still further, it is his submission that the amount awarded on account of loss of consortium, funeral expenses and loss of estate are also grossly inadequate.

On the other hand, learned counsel for the respondent-Insurance Company submits that the income of the deceased has rightly been taken by the Tribunal at the level of the basic salary. It is his further submission that the claimants in the present case are not entitled to the benefit of future prospects; since the deceased was on a fixed salary.

Having heard the counsel for the parties and perused the record with their able assistance, this Court is of the considered opinion that the argument raised by the counsel for the claimants deserve to be sustained. The claimants have duly proved on record the salary certificate qua the income of the deceased at the time of the accident. Even the Tribunal has accepted the validity of the salary certificate proved on record by the claimants. Therefore, the Tribunal could not have taken the income of the deceased less than the income proved by the defendants. So far as the reduction of salary by excluding the allowances and personal entitlements are concerned, the same is not permissible because the same is taken care of separately by applying a standardised deduction, as per the judgments of the Hon'ble Supreme Court. Therefore, in the present case also since the Tribunal had applied deduction of 1/3rd on account of the personal expenses. Hence, any other deduction in salary, by terming the allowance to be personal, could not have been made by it on the same ground that the amount of those allowances might have been consumed by the deceased himself. Deduction twice on account of personal expenses is not the permissible. Otherwise also, learned counsel for the respondent-Insurance company has failed to produce any judgment or provision of law to substantiate that the allowances beyond the basic salary are not to be counted towards income of the deceased for the purpose of calculation of the compensation. The allowances are very much part of salary and income of deceased. Learned counsel for the respondent-Insurance Company further submits that since the income tax has also to be deducted from income shown in salary certificate, therefore, the income has to be reduced accordingly.

Still further, it is submitted that since, as per the appointment letter, the deceased was only on probation, therefore, he cannot be treated as a permanent employee. However, these arguments of the learned counsel for the respondent-Insurance Company are also liable to be rejected for the simple reason that as per the appointment letter the probation of the deceased was only for six months and after six months, and as per the terms of appointment; the deceased would be a confirmed employee unless otherwise communicated by the employer/company. In the present case, the date of accident is after six months of the appointment letter. Therefore, the deceased would be deemed to be a confirmed employee on this date, unless, it is proved otherwise that his probation period was extended by the Company. The Insurance Company in the present case has not led any evidence, whatsoever, to show that the probation was ever extended by the employer. Not only this even the employer of the deceased has appeared as a witness. Despite that nothing has come out in the cross-examination of this witness to show that the probation of the deceased was ever extended. Therefore, the deceased shall be deemed to be a permanent employee.

The other argument of the learned counsel for the appellants that the income tax has to be deducted, is also not sustainable in law. The salary statement shows that a substantial part of it was by way of allowances. The salary minus the allowances, per se, is not in a taxable limit. The Insurance Company has not led any evidence to show that the final income, including the allowances, was liable to be taxed, particularly, in case of the deceased employee. Hence, this Court cannot enter into field of unnecessary guesswork to hold the income of the deceased liable to be taxed. The incidence of tax is an issue of fact. If the Insurance Company claimed this to be an issue of fact, it could have led the evidence to show the applicable tax in case of the present deceased. However, there is nothing on record to show that the income of the deceased, as shown in the salary certificate, is amenable to any tax. Hence, no tax is liable to be deducted from the salary of the deceased; for the purpose of calculation of the compensation.

Therefore, the income of the deceased, is taken as rounded figure of Rs.21,000/- per month, as have been established by the claimants. The evidence produced on record by claimants also shows that the deceased had been progressing in the income for the past several years. This shows that in ordinary course; he would have also got his income increased in future. Otherwise also, since the deceased was an employed person; having reasonable stability of job, being employee in established company; therefore, the claimants would be entitled to 50% increase of the income on account of future prospects of the deceased, being of the age less than 40 years as per the judgment of the Hon'ble Supreme Court. Accordingly, the claimants are granted the benefit of increase of 50% of salary towards future prospects. However, the Tribunal has rightly applied the deduction of 1/3rd in the income on account of personal expenses of the deceased. Accordingly, the loss of monthly dependency would be 14000 (21000-7000)+7000 (50% of 14000)= Rs.21000/-. Hence, the annual loss of dependency would be Rs.21000/- x 12=Rs.2,52,000/-. The Tribunal has rightly applied multiplier of 16 in the case as per the age of the deceased. Accordingly the total loss of dependency to the claimants would be Rs.2,52,000 x16= Rs.40,32000/-

Beside this, the argument of the learned counsel for the claimants that the compensation awarded on account of the loss of consortium, loss of estate and funeral expenses is inadequate, also deserves to be sustained. As per the judgment of the Hon'ble Supreme Court the compensation awarded on account of loss of consortium is enhanced to

Rs.40,000/-. The compensation awarded on account of loss of estate and on account of funeral expenses is increased to Rs.15000/- each in terms of judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co.Ltd.*** (supra).

Accordingly, the claimants are held entitled to a total amount of Rs.41,02,000/- (40,32,000+40,000+15,000+15,000). The interest on the amount shall be retained at the same rate as has been granted by the Tribunal.

No other argument is raised.

Hence the appeal of claimants is allowed to the above extent.

In view of the above, the appeal filed by the Insurance Company is dismissed. The appeal filed by the claimants is allowed by modifying the award to the extent mentioned above.

27th November, 2017 **[RAJBIR SEHRAWAT]**
Manju **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No